

October 4, 2006 Version

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM

AND

JUNEAU YOUTH SERVICES, INC.

EFFECTIVE DATES

1 October 2006 THROUGH 1 October 2011

RE BEHAVIORAL HEALTH CARE SERVICES:

Montana Creek Residential Program in Juneau, Alaska

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ARTICLE I - RECITALS

This professional services agreement is entered into between SouthEast Alaska Regional Health Consortium ("SEARHC"), a non-profit corporation incorporated in the State of Alaska, and the Contractor, Juneau Youth Services, Inc. ("JYS"), an Alaska and federal non-profit entity conducting business in the State of Alaska.

ARTICLE II - PERIOD OF PERFORMANCE

The performance period of this agreement shall be five years from 1 October 2006, or until 1 October 2011.

ARTICLE III - DEFINITIONS

- A. Alaska Native/American Indian: For the purpose of this agreement, these terms mean an Indian, Aleut or Eskimo whose eligibility as a beneficiary of the Indian Health Service (IHS) and residency in Alaska has been verified by SEARHC. Questions of eligibility for a particular person shall be resolved by the Contract Health Services Manager whose decision may be appealed to the Corporate Business Officer, for SEARHC.
- B. Juneau Youth Services, Inc.: A non-profit corporation incorporated in the State of Alaska and located at P.O. Box 32839, Juneau, Alaska 99803.
- C. JYS: Juneau Youth Services, Inc.
- D. SouthEast Alaska Regional Health Consortium: A consortium of federally-recognized tribes incorporated as a non-profit corporation in the State of Alaska and located at 3245 Hospital Drive in Juneau, Alaska, with a hospital facility, Mt. Edgecumbe Hospital located at 222 Tongass Drive, in Sitka, Alaska. SEARHC is a tribal organization within the meaning of 25 USC 450f(d) that provides health care services in Southeast Alaska to American Indians, Alaska Natives and other eligible individuals in a manner that is appropriate to their cultural values and traditions, under the Alaska Tribal Health Compact and funding agreement with the Indian Health Service (IHS) authorized by Sec. 325 of P.L. 105-83 and Title V of the Indian Self-Determination Act of 1975, 25 U.S.C. §§ 450, et seq., Pub. L. No. 93-638, as amended.
- E. SEARHC: SouthEast Alaska Regional Health Consortium. SEARHC is enrolled with the State of Alaska as a Medicaid provider.
- F. Project Officer/Contractor contact information: Unless otherwise stated, the Project Officer for this agreement will be the Behavioral Health Division Director of SEARHC. The Project Officer is responsible for

monitoring Agreement-related progress, and certifying the completion of satisfactory agreement performance, providing technical assistance if needed and assisting with the resolution of technical problems. The contact person for the Contractor will be the Executive Director of JYS.

- G. Facility: The 15-bed, level 4 treatment facility located at 10801 Black Bear Road in Juneau, Alaska (beside the Miller House). The name of the facility is the Montana Creek Residential Program.
- H. Public Purpose: Construction of the Montana Creek Residential Program facility was the culmination of collaborative efforts by SEARHC and JYS in recognizing and responding to the critical need for behavioral health services for children and adolescents in Southeast Alaska. The State of Alaska has strongly encouraged SEARHC and JYS to develop and jointly operate the Montana Creek Residential Program as part of the State's "Bring the Kids Back Home" initiative. The State of Alaska, JYS and SEARHC agree that there is a great need for the services that will be provided at the Montana Creek Residential Program, and that those services can be best provided through this joint effort. This collaborative endeavor is intended to serve the youth of Southeast Alaska, who will, for the first time, be able to receive critically needed services in a facility close to their home communities.
- I. Public, Nonprofit and Foundation Funding. The Montana Creek Residential Program facility's construction is funded entirely through public, non-profit and foundation funding. The completion of this project was made possible only with very generous grants from the Denali Commission and Rasmussen Foundation, whose vision and direction was responsible for SEARHC's participation in this collaborative project, and through the consistent and dedicated support of the State of Alaska and Alaska's Congressional Delegation.

ARTICLE IV -SCOPE OF WORK; COMPENSATION

JYS agrees to provide professional services to SEARHC on the following terms and conditions:

A. **Services Provided.** JYS agrees to provide residential behavioral services at the Montana Creek Residential Program to youth eligible for SEARHC services.

B. **Operator/Programmatic and Clinical Decisions.** JYS agrees to operate the Facility and to make all programmatic and clinical decisions at the Facility. JYS agrees to maintain all required licenses and certifications and meet

all legal requirements for provision of appropriate services in the Facility.

C. **Billing Agent:** JYS agrees to act as SEARHC's billing agent with all payers for the behavioral health services provided within the Facility. JYS will process and submit Medicaid billings for Medicaid-eligible youth on SEARHC's behalf, using SEARHC's provider number and in accordance with all applicable state and federal regulations. JYS will bill all primary and secondary payers for all allowable costs, and will provide all necessary information to payers in a timely manner to ensure maximum reimbursement for services provided in the Facility. In the event that any financial audit related to the Facility's operations indicates that funds for behavioral health services provided by JYS in the Facility that have been billed under item D below must be repaid by SEARHC to any payer, JYS agrees to fully reimburse SEARHC for any financial pay-back to the payer (including any fines, penalties and interest).

D. **Payment to JYS for Rent and Services Provided:** SEARHC agrees to pay JYS on a monthly basis for all reimbursable behavioral health services provided by JYS in the Facility that have been billed under item C in this section. The charge to SEARHC for all client services will be equal to 97.2% of the published rates for allowable costs in the Alaska Medical Assistance Program, Behavioral Health Services (Community Mental Health Clinics and Substance Abuse Services) Provider Billing Manual at the time services are provided. The signatories to this Agreement may adjust this billing rate on an annual basis, effective 1 July of each year, beginning 1 July 2007. Unless so adjusted, the current rate will remain in effect. If so adjusted, the adjusted rate will then apply prospectively to all services provided hereunder. Charges will be assessed on a fee-for-service basis for client services, including assessments and services delineated in clients' individualized treatment plans. SEARHC will pay JYS within two weeks of receiving JYS's invoice for services rendered. The parties agree that the payments made under this section, together with other consideration, mutual promises and covenants in this Agreement, reflect the fair market value of JYS's services to SEARHC and the fair market value for the rent of the Facility and for all associated equipment, supplies and materials provided under this Agreement, as that term is defined in 42 CFR § 411.351.

E. **Quality Assurance.** SEARHC agrees that it will retain the ultimate responsibility for quality assurance for services provided to clients in the facility. The parties agree in good faith to establish an overall framework for the Facility-related programs that are compatible with quality assurance standards for each agency, that are in full compliance with all applicable federal and state rules, and are acceptable to the other party. The parties agree that third party review of the facility and the program will be made available to either party as part of the quality review process. The parties further agree to make available records pertaining to quality assurance to the other party when requested to do so and to cooperatively formulate a framework to ensure the confidentiality of information of clients and records.

F. **Compliance with Law.** SEARHC and JYS intend to fully comply with 42 U.S.C. § 1320a-7b(b), commonly known as the federal Anti-Kickback Statute, with all federal and state law provisions governing fraud, abuse or referrals under the Medicaid program and other federal and state health care programs; intend that this professional services agreement comply with and is to be interpreted consistent with the Anti-Kickback Statute safe harbors, including the safe harbor set forth in 42 C.F.R. § 1001.952(d) (professional services and management contracts), as those rules may be amended; and agree that in the event any court or administrative agency of competent jurisdiction determines that this professional services agreement violates any such statutes, rules or regulations or that the compensation under this professional services agreement exceeds reasonable compensation, that SEARHC and JYS shall take all actions necessary to comply with, and to conform this professional services agreement to, those statutes, rules or regulations.

ARTICLE V - LIABILITY INSURANCE COVERAGE

A. SEARHC is a participant in the Alaska Tribal Health Compact and has annual funding agreements with the IHS. As such, claims against SEARHC and its employees, including its employees' action on behalf of SEARHC as provided in 28 U.S.C. § 2671, including any individual who provides health care services pursuant to a personal services contract with SEARHC for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service, are deemed to be claims against the United States that are covered by the Federal Tort Claims Act (FTCA), 28 U.S.C. §§1346, 2401 and 2671-2680, pursuant to 42 U.S.C. §233, 25 U.S.C. § 450f(d) and 25 U.S.C. §1680c(d), § 314 of P.L. 101-512, as amended. SEARHC agrees that it will submit all such claims that arise out of the operation of the Montana Creek Residential Program to the United States and use its best efforts to secure the United States' agreement to defend and indemnify SEARHC and JYS for any such claims. Because of the nature of the FTCA, SEARHC does not represent or warrant that any or every claim against JYS, or SEARHC, will be covered by the Federal Tort Claims Act or that the United States will agree to defend or indemnify either JYS or SEARHC for any or every such claim. JYS agrees to indemnify and hold harmless SEARHC for all claims arising out of any actions which are finally determined to constitute malpractice or negligence and are not otherwise covered by the Federal Tort Claims Act. JYS's obligation to seek coverage and to indemnify and hold SEARHC harmless will arise only for those claims not covered by the FTCA. This does not relieve JYS of the obligation to notify its insurer(s) of any claim to protect against a failure-to-notify coverage defense.

B. JYS agrees to maintain liability insurance in a commercially-reasonable amount for its professional and paraprofessional staff. It further agrees to provide proof of that coverage to SEARHC upon demand. JYS agrees not to terminate such coverage without giving SEARHC thirty (30) days' advance written notice.

ARTICLE VI - PERSONNEL

Each party shall provide all necessary personnel required to carry out the terms of this agreement. JYS agrees that it will be responsible for providing a professional and paraprofessional staff with all requisite training, experience and licenses, and that meets all applicable legal requirements for the provision of behavioral health services at the Facility.

ARTICLE VII - SUPPLIES

JYS agrees to furnish all supplies and equipment necessary to carry out this Agreement at the Facility.

ARTICLE VIII - RECORDS & REPORTS

A. JYS agrees to be the custodian of contemporaneously-made complete records relating to persons receiving services pursuant to this agreement, including records relating to informed consent, services provided, and billing and payment records. These records will be available to JYS and SEARHC at all times. JYS will maintain records in accordance with all legal requirements. Client records must contain sufficient information to plainly identify the patient, to justify diagnosis and treatment, and to document services accurately.

B. With reasonable advance notice, the Co-Project Officers or their agents shall be entitled to visit the Facility and review the administrative and clinical records pertaining to Facility residents receiving services provided under this agreement.

C. Each party to this agreement shall comply with the requirements of the Privacy Act of 1974 relating to the maintenance, release and the disposition of records of beneficiaries served under this agreement.

D. Each party reserves the right to audit applicable Facility-related records and receive appropriate supporting documents to evidence accomplished contractual requirements and costs.

ARTICLE IX - AMENDMENTS AND EXTENSION

This agreement may be extended or amended by mutual agreement of participating parties.

ARTICLE X - TERMINATION

This agreement may terminate for any of the following:

- A. Either duly-authorized representative of JYS or SEARHC may terminate this contract without prior notice in the event of willful negligence and/or actions by the other party that endanger clients or management.
- B. Either party may terminate this contract, with or without cause, by giving six (6) months' advance written notice to the other party.
- C. This contract shall automatically terminate should either party be excluded from participation in the Medicaid or Medicare programs, have its Alaska Business License terminated for any reason, or lose any required professional license, certificate or registration required to perform this contract.
- D. The expectation is for this to be a long term business agreement. Unless terminated as indicated above, this agreement shall remain in effect for 5 years from the effective date, and will be renewed in increments of 5 years.
- E. The agreement may be modified only with the signatures of the authorized representatives on behalf of JYS and SEARHC, respectively.

ARTICLE XI - HIPAA REQUIREMENTS

The parties agree to comply with HIPAA, as provided in their HIPAA Business Agreements, which are hereby incorporated by reference.

ARTICLE XII – Responsibilities

A. Each party to this agreement verifies that it and any other partner to this agreement are not currently excluded by the Office of the Inspector General (OIG), Department of Health and Human Services, and/or the General Services Administration (GSA).

B. Each party to this agreement agrees to notify the other party within 5 working days in the event that either party or any partner(s) becomes excluded by the OIG or the GSA.

IN WITNESS WHEREOF, the parties by signature affirm this agreement, with an effective date of 1 October 2006.

JYS, Inc.

SEARHC

By: Walter Meyers
Its: Executive Director

By: Terrell Brown
Its: Pres/COO